

July 15, 2003

PROPOSED AMENDMENTS TO AB 512  
(AS AMENDED JUNE 23, 2003)

Article 4. Operating Rules

☞ **CLRC Staff Note.** This draft is intended to reflect the tentative consensus reached at the July 15, 2003 meeting between David Duran (Assembly Member Bates' staff), Brian Hebert (Law Revision Commission staff), Bill Powers (Congress of California Seniors), Marjorie Murray (Congress of California Seniors), Karen Rausch (Congress of California Seniors), Skip Daum (Community Association's Institute & Leisure World), and Guy Puccio (Executive Council of Homeowners). It does not represent any final commitment by Assembly Member Bates or by the Law Revision Commission. Sections of AB 512 that would not be amended are not included in this draft.

1357.100. As used in this article, "rule article:

(a) "Operating rule" means a regulation adopted by the board of directors of the association for the general management and operation of the development or the conduct of the business and affairs of the association.

(b) "Rule change" means the adoption, amendment, or repeal of an operating rule by the board of directors of the association.

~~1357.110. This article only applies to an operating rule relating to one or more of the following subjects:~~

~~(a) Use of the common area or of an exclusive use common area.~~

~~(b) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.~~

~~(c) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.~~

~~(d) Assessment collection procedures.~~

~~1357.120. This article does not apply to the following actions by the board of directors of an association:~~

~~(a) A decision in a specific case that is not intended to apply generally.~~

~~(b) A decision setting the amount of a regular or special assessment.~~

~~(c) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.~~

~~(d) Issuance of a document that merely repeats existing law or the governing documents.~~

~~(e) A decision regarding maintenance of the common area.~~

1357.130.

1357.110. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

- (a) The rule is in writing.
- (b) The rule is within the authority of the board of directors of the association conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.
- (c) The rule is not inconsistent with governing law and the declaration, articles of incorporation or association, and bylaws of the association.
- (d) The rule is adopted, amended, or repealed in good faith and in substantial compliance with the requirements of this article.
- (e) The rule is reasonable.

☞ **CLRC Staff Note.** CAI expressed concern about the burden of proof in a case challenging the good faith of the board in adopting a rule. Mr. Hebert proposed adding the following language to the Commission’s Comment to Section 1357.110: “Nothing in this section affects the burden of proof a party bears when asserting a claim for relief or a defense. See Evid. § 500 (burden of proof).” Mr. Daum will ask his clients whether that addresses their concern.

~~1357.140.~~ The board of directors of an association shall provide members with notice and an opportunity to comment before making a rule change.

~~1357.150.~~ (a) Use of the procedure described in this section satisfies the requirements of Section 1357.140. An association is not required to use this procedure.

~~(b) The board of directors of the association shall deliver notice of a proposed rule change to every association member. The notice shall include all of the following information:~~

- ~~(1) The text of the proposed rule change.~~
- ~~(2) A description of the purpose and effect of the proposed rule change.~~
- ~~(3) The deadline for submission of a comment on the proposed rule change.~~

~~(c) For a period of not less than 30 days following delivery of a notice of a proposed rule change, the board of directors shall accept written comments from association members on the proposed rule change.~~

~~(d) The board of directors shall consider any comments it receives and shall make a decision on a proposed rule change at a board meeting. A decision shall not be made until after the comment submission deadline.~~

~~(e) The board of directors shall deliver notice of a rule change to every association member. The notice shall set out the text of the rule change and state the date the rule change takes effect. The date the rule change takes effect shall be not less than 15 days after notice of the rule change is delivered.~~

~~(f) A document that is required to be delivered pursuant to this section is subject to Section 1350.7.~~

~~1357.160. (a) Use of the procedure described in this section satisfies the requirements of Section 1357.140. An association is not required to use this procedure.~~

~~(b) If the board of directors of an association determines that an immediate rule change is necessary to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, it may make the rule change immediately.~~

~~(c) As soon as possible after making a rule change under this section, but not more than 15 days after making the rule change, the board of directors shall deliver notice of the rule change to every association member. The notice shall include the text of the rule change and an explanation of why an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association.~~

~~(d) A rule change made under this section is effective for 120 days, unless the rule change provides for a shorter effective period.~~

~~(e) A rule change made under this section may not be readopted under this section.~~

~~(f) A document that is required to be delivered pursuant to this section is subject to Section 1350.7.~~

1357.120. (a) Sections 1357.130 and 1357.140 only apply to an operating rule that relates to one or more of the following subjects:

(1) Use of the common area or of an exclusive use common area.

(2) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.

(3) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

[(4) Assessment collection procedures.]

(b) Sections 1357.130 and 1357.140 do not apply to the following actions by the board of directors of an association:

(1) A decision regarding maintenance of the common area.

(2) A decision on a specific matter that is not intended to apply generally.

(3) A decision setting the amount of a regular or special assessment.

(4) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.

(5) Issuance of a document that merely repeats existing law or the governing documents.

☞ **CLRC Staff Note.** ECHO and CAI object that use of the term “assessment collection procedures” in subdivision (a)(4) will convey the wrong impression to association board members, by suggesting that they have authority to develop procedures that differ from the existing detailed statutory collection procedures. They would prefer to use language that more

specifically defines the types of assessment collection rules that should be subject to member oversight.

Two examples of specific categories that might replace subdivision (a)(4) were discussed:

(4) Any standards for delinquent assessment payment plans.

(5) Any procedures adopted by the association for resolution of assessment disputes.

The Seniors accepted that the approach outlined above might be acceptable, if additional specific categories could be identified and added. Ms. Murray committed to work with CAI, ECHO and the Law Revision Commission to identify other specific categories that should be considered for inclusion.

1357.130. (a) The board of directors shall provide written notice of a proposed rule change, at least [30] days before making the rule change.

(b) A decision on a proposed rule change shall be made at a meeting of the board of directors, after consideration of any comments made by association members. A rule change becomes effective at the time of the board's decision.

(c) As soon as possible after making a rule change, but not more than 15 days after making the rule change, the board of directors shall deliver notice of the rule change to every association member.

(d) If the board of directors determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, it may make an emergency rule change. An emergency rule change is not subject to subdivision (a). An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period. A rule change made under this subdivision may not be readopted under this subdivision.

(e) The notices required by this section are subject to Section 1350.7.

☞ **CLRC Staff Notes.** Both CAI and the Seniors would accept a 30 day notice period in subdivision (a). Mr. Puccio needs to consult further with his principals to determine whether they would accept that period.

1357.170.

1357.140. (a) Members of an association owning 5 percent or more of the separate interests may call a special meeting of the members to reverse a rule change.

(b) A special meeting may be called by delivering a written request to the chair or secretary of the board of directors. The written request may not be delivered more than 30 days after the members of the association are notified of the rule change. Members are deemed to have been notified of a rule change on delivery of notice of the rule change, or on enforcement of the resulting rule, whichever is sooner. For the purposes of Section 8330 of the Corporations Code, collection of signatures to call a special meeting under this section is a purpose reasonably related to the interests of the members of the association. A member request to

copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the member's interests as a member.

(c) The rule change may be reversed by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by mailed written ballot in conformity with Section 7513 of the Corporations Code, or if the declaration or bylaws require a greater proportion, by the affirmative vote or written ballot of the proportion required.

(d) Unless otherwise provided in the declaration or bylaws, for the purposes of this section, a member may cast one vote per separate interest owned.

(e) A meeting called under this section is governed by Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and 7613 of, the Corporations Code.

(f) A rule change reversed under this section may not be readopted for one year after the date of the meeting reversing the rule change. [Nothing in this section prevents the board of directors adopting a different rule on the same subject as a rule change reversed under this section.]

(g) The As soon as possible after the close of voting, but not more than 15 days after the close of voting, the board of directors shall provide notice of the results of a member vote held pursuant to this section to every association member. Delivery of notice under this subdivision is subject to Section 1350.7.

(h) This section does not apply to an emergency rule change made under subdivision (d) of Section-1357.160 1357.120.

☞ **CLRC Staff Note.** The bracketed sentence in subdivision (f) was proposed in response to a concern raised by ECHO. Mr. Puccio will ask his principals whether the proposed language adequately addresses their concern.

~~1357.180.~~ 1357.150. (a) This article applies to a rule change commenced on or after January 1, 2004.

(b) Nothing in this article affects the validity of a rule change commenced before January 1, 2004.

(c) For the purposes of this section, a rule change is commenced when the board of directors of the association takes its first official action leading to adoption of the rule change.

SEC. 29. Section 1373 of the Civil Code is amended to read:

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by its declaration:

(1) Section 1356.

(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part 4 of Division 2 of the Civil Code.

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.


(7) Section 1366.1.

(8) Section 1368.

~~(9) Article 2 (commencing with Section 1378.010) of Chapter 10 of Title 6 of Part 4 of Division 2 of the Civil Code.~~

~~(10) Article 3 (commencing with Section 1378.050) of Chapter 10 of Title 6 of Part 4 of Division 2 of the Civil Code.~~

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

 <b>Staff Note.</b> Sections 30, 31, & 32 of the bill would be deleted. To save paper, I haven't reproduced them in this draft.
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